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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 MARIA ADDIEGO, by and through her
12 conservator DEBRA J. DOLCH,

13 Plaintiff,

14 v.

15 CITY AND COUNTY OF SAN
16 FRANCISCO ET AL,

17 Defendant.
18 _____/

No. C 05-04819 CRB

**ORDER DENYING MOTIONS FOR
FEES/SANCTIONS**

19 By Memorandum and Order filed February 17, 2006, the Court dismissed plaintiff's
20 complaint, including her section 1983 claim, without leave to amend. Now pending before
21 the Court are defendants' motions for attorneys' fees pursuant to 42 U.S.C. § 1988 and
22 plaintiff's motion for sanctions against defendants. After carefully considering the papers
23 filed by the parties, the Court concludes that oral argument is unnecessary, see Local Rule 7-
1(b), and DENIES all the motions.

24 Section 1988 provides that in any section 1983 action, "the court, in its discretion,
25 may allow the prevailing party, other than the United States, a reasonable attorney's fee as
26 part of the costs." 42 U.S.C. § 1988(b). It is undisputed that defendants are the prevailing
27 parties; however, "[u]nder § 1988 jurisprudence, a prevailing defendant is treated differently
28 from a prevailing plaintiff and fees are not awarded routinely or simply because defendant
succeeds." Champlain v. City of Folsom, 2006 WL 449120 (E.D. CA. Feb. 23, 2006) (citing

1 Patton v. County of Kings, 857 F.2d 1379, 1381 (9th Cir. 1988)). To be entitled to section
 2 1998 fees, a prevailing defendant must show that the “plaintiff’s action was frivolous,
 3 unreasonable or without foundation, even though not brought in subjective bad faith.”
 4 Christiansburg Garment Co. v. Equal Empl. Opp. Comm’n, 434 U.S. 412, 421 (1978). This
 5 standard presents a “high hurdle” for defendants to overcome, although it is not
 6 insurmountable. Saman v. Robbins, 173 F.3d 1150, 1157 (9th Cir. 1999).

7 Defendants’ motions present a close question. Plaintiff’s section 1983 claim was
 8 novel and not supported by citation to any relevant law. Moreover, plaintiff continues to
 9 mischaracterize her claim as one involving “involuntary civil confinement or civil
 10 commitment,” even though such a characterization is not warranted by the facts alleged in
 11 the complaint. Nonetheless, the circumstances alleged in the complaint, if true, are
 12 maddening, although understandable, and the Court can appreciate why plaintiff would be
 13 outraged and therefore initiate a lawsuit. Moreover, the Court must consider plaintiff’s
 14 financial resources and ability to pay attorneys’ fees. See Miller v. Los Angeles County
 15 Board of Education, 827 f.2d 617, 621 (9th Cir. 1987). Plaintiff’s counsel’s declaration
 16 demonstrates that she does not have the resources to pay such an award.

17 Plaintiff’s unsuccessful attempt to obtain punitive damages pursuant to Civil Code
 18 section 3294 in the state court does not warrant fees in this Court. The state court did not
 19 rule on the merits of a section 1983 claim, and this Court’s reasons for dismissing the section
 20 1983 claim are not directly related to the state court’s dismissal of plaintiff’s demand for
 21 punitive damages. Accordingly, the Court, in its discretion, DENIES defendants’ motions
 22 for section 1988 fees and costs.

23 The City’s request for section 1927 sanctions is also DENIED. “The filing of a
 24 complaint may be sanctioned pursuant to Rule 11 or a court’s inherent power, but it may not
 25 be sanctioned pursuant to § 1927.” In re Keegan Management Co., Securities Litig., 78 F.3d
 26 431, 435 (9th Cir. 1996).

27 Finally, plaintiff’s motion for section 1927 sanctions is also DENIED. Only conduct
 28 rising to the level of maliciousness, vexatiousness or bad faith warrants section 1927

sanctions. See Gomez v. Vernon, 255 F.3d 1118, 1134-35 (9th Cir. 2001). Defendants' motion was not brought in bad faith; as the Court explained, they present a close question and defendants were wholly justified in filing the motions.

IT IS SO ORDERED.

Dated: April 27, 2006



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California